

Request for Waiver of 47 CFR § 54.503(c)(4) (“28-day rule”) Regarding USAC Schools and Libraries Application

Proceeding: 02-6 (In the Matter of Schools and Libraries Universal Service Support Mechanism)

Filer (USAC Applicant): Burdick Job Corps Center, USAC Billed Entity Number 16072989 (“Burdick”)

Consultant: e-Rate Program, LLC, St. Louis, Missouri (“ERP”).

General Description: ERP, on behalf of Burdick, filed a Form 471, Application Number 171029233, on Tuesday, May 2, 2017. Without any intent to circumvent proper procedures, ERP filed that Application two (2) days prior to the expiration of the 28-day competitive bidding period. In light of the actual Allowable Contract Date of May 4, 2017, good cause exists to waive the requirements of 47 CFR § 54.503(c)(4) (the “28-day rule”), as set forth in more detail herein below.

Detailed Description:

47 CFR § 54.503(c)(4) provides:

After posting on the Administrator's Web site an eligible school, library, or consortium FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait **at least four weeks** from the date on which its description of services is posted on the Administrator's Web site before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

47 CFR § 54.503(c)(4) (the “28-day rule”) (emphasis added). Good cause exists to waive the 28-day rule.

Burdick filed for E-rates each year beginning in Funding Year 2013. Each year, from Funding Year 2013 through Funding Year 2016, Burdick filed its Forms 470 and 471, and USAC approved Burdick’s Applications for the full amount requested¹. In such years, Burdick filed all Forms 470 and 471 properly in all respects and within the applicable filing period.

In Funding Year 2016, Burdick filed a Form 471, Application Number 161041562, seeking funding as follows:

- 1) FRN 1699090558, \$10,254.72 for POTs phone lines provided by SRT Communications;
- 2) FRN 1699090562, \$540.00 for cell phone service provided by SRT Communications;

¹ In Funding Year 2016, Burdick requested \$32,534.46 in funding, and USAC committed an amount of \$32,531.10, a reduction of only \$3.36 from the requested amount.

- 3) FRN 1699090576, \$15,316.44 for cell phone service provided by Verizon; and,
- 4) FRN 1699090584, \$6,423.30 for fiber internet service provided by SRT Communications.

The four FRNs above were approved by USAC in their entirety, or substantially in their entirety.

In Funding Year 2017, Burdick filed its Form 470, Application Number 170079351, on April 6, 2017, seeking 33 or more cell lines – voice only, 30 POTs lines or more, 1 PRI 23 channels, and fiber internet service, with more specific details provided in the Form 470. Such form 470 triggered a 28-day bidding period that expired on May 4, 2017.

Prior to filing its Form 471, Burdick received bids for the above requested services, and considered them. On April 18, 2017, Burdick received a bid from AT&T for cell phones, and duly considered that bid before choosing service providers and filing the Form 471. After careful and proper evaluation, Burdick chose its current provider, Verizon, for requested cell phone service. There were no other bids for that service. Burdick also chose its existing provider, SRT Communications, for land line phone service and for internet service. There were no other bids for those services.

Without any intent to circumvent proper procedures, Burdick provided information relevant to the Form 471 prior to the expiration of the 28-day bidding period.

On May 2, 2017, two (2) days prior to the expiration of the 28-day bidding window, ERP filed Form 471, Application Number 170079351, seeking funding as follows:

- 1) FRN 1799062693, \$6,909.77² for local/long distance and PRI lines provided by SRT Communications;
- 2) FRN 1799062704, \$6,796.22 for cell phone service provided by Verizon; and,
- 3) FRN 1799062718, \$6,692.76 for fiber internet service provided by SRT Communications.

The services and providers identified on that Form 471 for Funding Year 2017 were substantially identical to the services and providers identified in Funding Year 2016 and approved by USAC that year. Moreover, the monthly recurring amounts sought in Funding Year 2017 are actually lower than those sought in Funding Year 2016. In addition, the amounts described above are consistent with commercially available services and pricing.

Neither Burdick nor ERP are aware of any additional bids that existed for the services identified on the Form 471, other than those considered between April 6, 2017, and May 2, 2017. Furthermore, neither Burdick nor ERP are aware of any service providers that wanted to bid for

² The original certified Form 471 sought \$69,088.97 in funding, but this was due to a typographical error resulting in a monthly recurrent amount displayed as \$19,191.38 rather than the correct monthly recurring amount of \$1,919.38. Subsequent to May 2, 2017, ERP notified USAC of the mistake through proper and timely procedures, asked that the extraneous “1” be removed, and provided the correct monthly recurring amount of \$1,919.38.

the relevant services but did not do so. Neither Burdick nor ERP realized that the Form 471 had been filed early until over 60 days after the filing.

In Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-297249, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) ("Aberdeen School District Order"), the FCC noted:

The Commission **may waive any provision of its rules** on its own motion and **for good cause** shown. ...A rule may be waived where the **particular facts make strict compliance inconsistent with the public interest**. ... In addition, the Commission **may take into account considerations of hardship, equity, or more effective implementation** of overall policy on an individual basis. ... In sum, **waiver is appropriate if special circumstances warrant a deviation** from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. ...

(Aberdeen School District Order, Paragraph 1) (emphasis added). In the Aberdeen matter, the FCC ruled:

Based on the facts and the circumstances of these specific cases, we find that **good cause exists to waive** section 54.504(b)(4) of the Commission's rules, which requires applicants to wait 28 days after posting an FCC Form 470 to USAC's website before entering into an agreement with a service provider for the requested services. We find that Petitioners' errors related to the competitive bidding process **do not warrant a complete rejection** of their applications. We have examined the facts of each of these appeals and found that a waiver is warranted based on the circumstances presented and based on the facts that there is **no evidence of waste, fraud or abuse**. The goal of the competitive bidding process is to ensure that funding is not wasted because an applicant agrees to pay a higher price than is otherwise commercially available. We find **no indication in the record that, as a result of these errors, applicants benefited** from their mistakes **or that any service provider was harmed**. Specifically, there is **no evidence in the record that other bids were not considered** because these applicants did not fully comply with our competitive bidding rules. We find that the policy underlying these rules, therefore, was not compromised due to Petitioners' errors. In fact, those Petitioners with multi-year contracts complied with our competitive bidding rules when their requests for service were initially posted. Furthermore, we find that several of these Petitioners, while not waiting the full 28 days before entering into an agreement, **only missed the 28-day deadline by a minimal number of days** (i.e., one to three days) and therefore their requests for discounted services were **subject to competitive bidding for a meaningful period of time**. While we emphasize that

our competitive bidding rules are important to ensure a fair bidding process, we find that denying these Petitioners requests for funding would create **undue hardship** and prevent these potentially otherwise eligible schools and libraries from receiving E-rate funding. We therefore find that good cause exists to grant Petitioners a waiver of section 54.504(b)(4) of our rules. Accordingly, we grant and remand these appeals to USAC for further processing consistent with this Order.

Id. at Paragraph 9 (emphasis added). In Application for Review of the Decision of the Universal Service Administrator by Albert Lea Area Schools, Albert Lea, Minnesota, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-517274, et al., CC Docket No. 02-6, Order, 24 FCC Rcd 4533 (2009) (“Albert Lea Area Schools Order”), the FCC made a substantially similar decision on substantially similar grounds, citing the Aberdeen School District Order. See, Albert Lea Area Schools Order, Paragraphs 7-9.

The facts of Burdick’s Application are substantially similar to those that supported waiver of the 28-day rule in Aberdeen and in Albert Lea. Good cause exists to waive the 28-day rule in the case of Burdick’s Application, to wit:

- 1) The errors related to the competitive bidding process in this case do not warrant a complete rejection of Burdick’s Application;
- 2) No evidence exists of waste, fraud or abuse;
- 3) Burdick did not agree to pay a higher price than is otherwise commercially available;
- 4) No evidence exists that, as a result of the errors, Burdick benefited from the mistakes or that any service provider suffered harm;
- 5) No evidence exists that Burdick did not consider other bids;
- 6) Although Burdick did not wait the full 28 days, it only missed the 28-day deadline by 2 days and, therefore, the competitive bidding process lasted a meaningful period of time; and,
- 7) Denying the requests for funding would create undue hardship.

In addition to the above, the problems created by USAC in connection with its EPC system justify a waiver in this matter. Among other issues, in past Funding Year(s) the EPC system included a “fail-safe” that prevented the filing of a Form 471 prior to the expiration of the relevant 28-day bidding window. USAC omitted/removed that feature prior to the filing of Burdick’s Form 471 for Funding Year 2017. Moreover, ERP raised concerns about that specific issue with USAC, and specifically expressed the concern that an innocent mistake could lead to the premature filing of a Form 471.

Furthermore, Chairman Pai’s April 18, 2017, letter to Chris Henderson of USAC described in detail that USAC’s Portal system, and USAC as a whole, have “serious flaws.” ERP has also raised concerns regarding USAC to the FCC during Funding Year 2017. For example:

- There were repeated problems with the EPC Portal input system, during which users could not access or upload necessary data.
- Necessary tools, such as the Category 2 (Wi-Fi Equipment) budget tool were repeatedly inaccurate and misleading to filers.
- USAC instituted an arbitrary lock-down of data that prevented the update of filers' account portals.
- Unexplained blocks on the filing of Forms 471 occurred, preventing the necessary filing of forms prior to the close of the filing window, and/or necessitating filing for benefits under an incorrect entity identification (reference USAC Customer Service Cases 177294 and 177343, as a result of which we were instructed by USAC to file Forms 471 using incorrect Billed Entity Numbers).
- Filers faced barriers to filing proper Forms 471 due to incorrect data in the USAC system for enrollment figures and numbers of low income students for schools filing forms.

The Chairman specifically instructed USAC to “identify alternative options to assist applicants even in the event of IT failures.” In our case, as described above, such IT failures and other numerous problems evident in the USAC system and structure have contributed to the issues that gave rise to this request for waiver.

Due to the above and other problems with the EPC system, and because good cause exists to waive the 28-day rule in this instance, we ask that the FCC grant a waiver of the 28-day rule so that Burdick can obtain funding pursuant to this Application.

A copy of Chairman Pai's April 18, 2017, letter is also attached.

BURDICK JOB CORPS CENTER

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To whom it may concern;

My name is Don Hamm, and I am the Director of Administrative Services at Quentin Burdick Job Corps Center in Minot, North Dakota, USAC Billed Entity Number 16072989.

I am writing to clarify facts surrounding the bidding period triggered by the filing of our Form 470, Application Number 170079351, on April 6, 2017.

On that Form 470 we requested 33 or more cell lines – voice only, 30 POTs lines or more, 1 PRI 23 channels, and fiber internet service, with more specific details provided in the Form 470.

The only options made available to us regarding the services we requested were those we actually submitted on our Form 471, Application Number 170079351, and one other bid for cell phones from AT&T received on April 18, 2017. There were no other bids apart from those. Moreover, the only options made available to us regarding the services we requested were essentially the same services and providers we were already using at the time of our FY2017 filings, which had already been approved by USAC in FY2016, and the one additional bid for cell phones from AT&T received on April 18, 2017.

We considered all bids/options that we received, and we would have been happy to receive additional bids but there were none other than those described above and in our Form 471. We have not received any other bids at any time since April 6, 2017, either before or after the filing of our Form 471, other than those described above and in our Form 471. Similarly we are not aware of any service provider who wanted or is wanting to bid for requested services but was denied an opportunity.

The services we chose are at prices consistent with commercially available services from our providers. In selecting our services and providers, we did not benefit from any reduction in rates from prevailing commercially available rates in our geographic area.

There has been no waste, fraud or abuse in our selection of services and providers. No service provider has suffered any harm from any aspect of our handling of the bidding process, as far as we are aware.

Throughout the Funding Year 2017 filing process, our only intent has been to comply fully with all applicable rules and to submit proper filings, and our intent remains as such.

Sincerely,

Don Hamm
Director of Administrative Services
Quentin Burdick Job Corps Center
Minot, North Dakota